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No. 82-1075

ALEXANDER L. STEVENS
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IN THE
SUPREME COURT OF THE UNITED STATES
OCTOBER TERM, 1982

CPG PRODUCTS CORP. AND GENERAL MILLS
FUN GROUP, INC.,

Petitioners,

v.

ANTI-MONOPOLY, INC.,

Respondent.

Brief in Opposition to Petition
For a Writ of Certiorari to
the United States Court of
Appeals for the Ninth Circuit

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**QUESTIONS PRESENTED --
A COUNTER-STATEMENT**

1. Whether a registered (descriptive) trade-mark used to identify a unique, patented product that, after patent expiration still is its own genus, has become the "common descriptive name" of the product because of abandonment, through acts of omission and commission, when one survey shows the trade-mark is the only term the buying public uses to name that product and another survey shows that a majority of the respondents use the trade-mark to ask for the product for product-related (instead of source-related) reasons and "didn't much care who produced the product" and when no relevant surveys or expert testimony were submitted in support of the trademark.

2. Whether Rule 52(a) of the Federal Rules of Civil Procedure permits a court of appeals to substitute its finding that a trade-mark is invalid as "generic" for the contrary finding of a district court if the district court's conclusion was based on factual findings which were clearly erroneous and an examination by the court of appeals of the entire evidence left it with the definite and firm conviction that a mistake has been committed.

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Anti-Monopoly, Inc. ("respondent"
or "Anti-Monopoly") hereby opposes, and
files this brief in opposition to, the
Petition by CPG Products Corp. and
General Mills Fun Group, Inc. ("petition-

er" or "Parker Brothers") for the issuance of a writ of certiorari to review the decision and judgment of the Court of Appeals for the Ninth Circuit in Anti-Monopoly, Inc. v. General Mills Fun Group, Inc., No. 81-4281, issued on August 26, 1982, and in opposition to any motions for leave by any one or more third persons to file an amicus curiae brief in support of the petition.¹

**QUESTIONS PRESENTED BY PETITIONER
- A COUNTER-STATEMENT**

Petitioner's statement of the "Questions Presented" (p. i of Petition) is wholly unsatisfactory and fails to present any questions at all.

1. Various requests were made for permission to file amicus curiae briefs, all of which were denied by Anti-Monopoly, either for uncertainty of the amicus' intended argument, duplication of petitioner's argument, or irrelevance.

The heart of petitioner's first question, when stripped of excess words, reveals the inadequacy of the question:

"Whether a ... trade-mark ... ha(s) become the 'common descriptive name' solely because a ... survey indicates that a majority of the product's purchasers buy it because of a desire to have that product...."

This question by petitioner is sheer nonsense since purchasers obviously buy goods because they desire them. The court of appeals never made any such absurd determination.

Much of petitioner's argument throughout its petition is based on refuting this absurdity (the "absurdity issue").

A satisfactory statement of the first question is at p. i. To answer this properly formulated question needs no brief, which explains why petitioner has formulated its first question as it did.

Petitioner's second question is unsatisfactory, also. The second quest-

ion is restated by Anti-Monopoly at p. ii above.

RESPONDENT'S CORRECTED STATEMENT

Respondent disagrees with petitioner's statement of the case in many respects, and offers the following corrections of inaccuracies and omissions:

A Short Summary

Petitioner purchased the folkgame "Monopoly" played for about 25 years under the name monopoly from Charles Darrow in 1934. Darrow simply copied the folk game in toto. Petitioner nevertheless, secured a patent on behalf of Darrow even though petitioner knew he was not the inventor.

During the patent period, from 1935 to 1952, petitioner used the patent to eliminate all entry into the marketplace

for the monopoly game, and secured a written agreement by Milton Bradley, its major competitor, never to use the name "Monopoly" on any game.²

Shortly after the patent expired, petitioner tried unsuccessfully to keep the MONOPOLY game from becoming generic by changing the game rules and by establishing "real estate trading game" as the generic name. This effort failed and the public continued to call the game by its trademark, "Monopoly".

Petitioner never advertised the "Monopoly" game nor educated the public otherwise to think of the word "MONOPOLY" as a source indicator.

2. Petitioner also discouraged entry by placing a notice on all "MONOPOLY" boards: "THE DISTINCTIVE DESIGN OF THE GAME BOARD AND PIECES AS WELL AS THE WORD "MONOPOLY" ARE THE TRADEMARKS OF PARKER BROTHERS, INC. FOR ITS REAL ESTATE TRADING GAME EQUIPMENT."

Over the years, from 1935 to 1974, the date of commencement of this action, and beyond, petitioner threatened suit, and sued, numerous persons who wanted to enter the market with anything resembling the design of the "Monopoly" board (which had also been trademarked) or had anything in their name which included specific parts of the term "MONOPOLY". Thus, petitioner brought suit against the owners of the trade names MONOPSONY, THEOPOLY, TRIOPOLY, BLACK MONOPOLY, COSMOPOLY and in doing so made it impossible for anyone to use the term "monopoly" or similar (or not-so-similar) terms in any trademarks. The effect was to make it impossible for anyone with a game involving monopolies or anti-monopolies to market such game using the one term which was needed to describe its subject matter.

In 1971, Anti-Monopoly's founder, president and principal shareholder,

Ralph Anspach, a professor of economics at San Francisco State University, who has written articles on Adam Smith and the advantages of competition, invented a game espousing the principles of free competition and named it (after one change, discussed later) "Anti-Monopoly - The Bust-the-Trust Game", and applied for a trademark on the name, which was rejected because of the "MONOPOLY" trademark.

Anspach set up Anti-Monopoly, Inc. to manufacture and market the Anti-Monopoly game, and in 1973 the game was first offered and sold. From 1973 to 1976 approximately 500,000 copies were sold.

Petitioner during late 1973 started to interfere with Anti-Monopoly's distribution of the game and threatened to sue Anti-Monopoly, and immediately after the

second threat Anti-Monopoly commenced this action, in 1974, for a declaratory relief (that the "MONOPOLY" trademark was invalid and/or not infringed). Prior to the suit, Anti-Monopoly had obtained legal advice from two different trademark law firms that use of the opposite of a descriptive trademark could not possibly cause confusion and was not an infringement.

A. Introduction (Corrections)

Ralph Anspach, President of Anti-Monopoly ("Anspach") submitted a prototype of his game to other game companies under the suggested name "BUST THE TRUST - THE ANTI-MONOPOLY GAME", but was unable to license the game. Before going into production himself, as Anti-Monopoly, Inc., he reversed the name to "ANTI-MONOPOLY - THE BUST THE TRUST GAME" because he discovered that the terms "Bust-the-

Trust" and "Anti-Trust" mean to the average game buyer more breach of confidence or breaking into banks than it does opposition to industrial monopolies. He therefore selected the best name for his game without any sales failures under the first name. This name would have been chosen even if petitioner's game was not on the market under the name "MONOPOLY". Petitioner is aware of this, but in each stage of this litigation has started off with the same baseless charge, now being presented by petitioner's new attorneys without any evidence in the record.

Anti-Monopoly filed suit against Parker Brothers only after Parker Brothers turned down Anti-Monopoly's offers of disclaimer and change of name to antimonopolist, antimonopoli or anti-monopolism.

B. The First Trial (Corrections)

Parker Brothers spent absolutely no money at all in the advertising of its Monopoly game from inception through the date of trial.³ Its only marketing expenditure was for promotional stunts such as Monopoly tournaments, which promoted the product rather than the source.

Anti-Monopoly and Monopoly were stacked alongside each other in some retail stores because of the subject matter

3. See, e.g., The Wall Street Journal, November 18, 1982, p.31, which stated in part: ".... Parker Brothers, Inc. ... began buying advertising for Monopoly for the first time since the game's introduction in 1935."; and San Francisco Chronicle, November 6, 1982, AP story, p. 3, which stated in part: "'It has always been a simple case of keeping Monopoly in the public eye because the game was so big and so popular that it would take care of itself,' said R. Bruce Jones, vice president of sales at Parker Brothers.... (T)he company is (now) breaking two of its rules: it is actively advertising" See Appendix I.

with testimony that the two games helped the sales of each other.

C. The First District Court Decision (Corrections)

(5) Judge Williams, District Court Judge, also found that Anspach "designed the box to be unique and different from MONOPOLY" and "he instructed his sales staff to disassociate the game with Parker Brothers". Judge Williams also found that Anspach had "no intent to specifically infringe upon the MONOPOLY trademark since a sincere belief was held that use of the name ANTI-MONOPOLY would not constitute infringement." This belief was based on the opinions of two trademark firms.

E. The Second District Court Decision (Corrections)

Part of the documentary evidence included a letter from the President of

Parker Brothers ascribing the success of Monopoly to its exclusive use of the monopolizing game feature, a feature which was covered by the Darrow patent.

Petitioner's footnote 8, at page 9 of the petition, is inaccurate. "MONOPOLY" was compared with only 6 other trademarks in the survey (TIDE, LAVORIS, STP, SEVILLE, COKE and JELLO) and came in 4th (not 3rd out of 20 as stated in the footnote). This was so even though none of the other trademarks involved a product having a single manufacturer.

F. The Second Court of Appeals Decision (Corrections)

The court of appeals correctly applied the standard prescribed by Rule 52(a) of the Federal Rules of Civil Procedure, as discussed later.

The court of appeals had no reason to question the results of either of petitioner's surveys; it held that petitioner's "brand-name" ("TEFLON") survey "is not even some evidence to support finding 2; it is no evidence to support it" (13a); and held that petitioner's other survey (the "TIDE" Survey) was "of no relevance to this case" (19a).

The testimony of petitioner's first expert witness was rejected by the court of appeals because his direct testimony was on the irrelevant "TEFLON" survey; and upon cross examination and redirect the witness had no opinion on the relevance of petitioner's "TEFLON" survey to any issues in this case (Pet. App. at 13a). The other expert of petitioner testified solely as to the "TIDE" survey, which the court of appeals said had no relevance to this case (19a). The court

of appeals stated indirectly that the "TIDE" survey, which was intended as a reductio ad absurdum of the Motivation Survey, failed because it did not replicate the Motivation Survey (18a).

In passing, as an aside, the court of appeals said that the conclusion of the "TIDE" survey, instead of proving "absurdity", might be cause for alarm for Proctor & Gamble, if the survey had replicated Anti-Monopoly's Motivation Survey, which it had not, if it was carried out by persons who understood the Anti-Monopoly I test, and if that test could be mechanically extended to "the very different subject of detergents" (18a). In its Opening Brief in the court of appeals (2nd appeal), Anti-Monopoly analyzed the "TIDE" survey on the basis of the test in Anti-Monopoly I (product and source indicators) and concluded that the "TIDE"

survey results when properly tabulated add up to a very strong trademark for TIDE even though it had not replicated the Motivation Survey. The contrary conclusion was due to the frankly acknowledged lack of understanding of petitioner's second expert witness concerning the concept of primary significance explained in Anti-Monopoly I. He also admitted he had not read the opinion.

Anti-Monopoly's "motivation" telephone survey (the "Motivation Survey") was designed to ascertain the use of the term "Monopoly" by those who had purchased the game in the past or intended to do so in the future. It contained two key parts. An open-ended question asked why consumers had bought or would buy "Monopoly". 82% mentioned some aspect of the playing of the game (product indicators) and only 7% mentioned the equipment and 1%

spoke of price (source indicators). Petitioner fails to discuss this part of the survey.

In the other part of the survey 65% chose "I want a 'Monopoly' game primarily because I am interested in playing 'Monopoly', I don't much care who makes it." Thirty-two percent chose: "I would like Parker Brothers' 'Monopoly' game primarily because I like Parker Brothers' products." Because petitioner has misused this part to set up its sham "anonymity" issue, it should be pointed out that the second part of the survey did not tell us anything about whether the respondents knew the name of the producer of the "Monopoly" game to be Parker Brothers. The survey company had informed respondents that Parker Brothers produces "Monopoly" and testified that it had kept in the survey all those who did not know

that Parker Brothers produced "Monopoly". This was done to simplify⁴ the survey since the court of appeals had already ruled that, in a single-producer case, it was irrelevant whether the consumers know there is only a single producer or what the producer's name is.

The petitioner asserts incorrectly that the court of appeals based its

4. The survey was designed to apply only to past or future buyers of the "Monopoly" game. If the survey company had asked "Are you aware of "Monopoly"?", this would have opened discussion about what type of "monopoly" was being asked for, e.g., a game, a commercial market dominator, an economic theory, etc. Good polling practice is to eliminate as much irrelevant conversation as possible to avoid biasing the respondent. If the survey began with, "Are you aware of the "Monopoly" game?", this could have been product bias (reference to "game") detrimental to petitioner; therefore, to be fair to both sides, the survey balanced the screening question with the phrase "produced by Parker Brothers", which gave a source indicator to offset the product indicator ("game").

invalidation of the "Monopoly" trademark solely on the results from the second part of the Motivation Survey. But this is totally false. The court of appeals based its decision on the following additional grounds, which it considered in terms of the vulnerability of the "Monopoly" trademark due to the patent period and the descriptiveness of the name:

A. The first part of the Motivation Survey;

B. The "Thermos" survey; and

C. Petitioner's promotion of the game so that the name of the game became generic.

REASONS FOR DENYING THE PETITION

The Ninth Circuit followed an established decision of this Court, which result was intended to be retained when the Lanham Act was enacted by Congress. Congress intended that when a trademark

became the common descriptive name of the article to which it was affixed that the trademark was invalid. This result was intended to prevent monopolization of a market by having an exclusive property interest in the name by which consumers asked for the product or service. There is no conflicting decision in any other circuit.

Petitioner claims that the Ninth Circuit opinion will cause chaos in the marketplace, basing its claim on the belief that "pirates" will commission "motivation" surveys to show that "consumers purchase the brand-name product primarily because of a desire to have that product...". This argument, as explained previously, is absurd, and does not rest on any part of the Ninth Circuit's opinion. Petitioner wilfully fails to state the Ninth Circuit's test, and presumably hopes that nobody will notice. The Ninth

Circuit test requires a determination of whether buyers and prospective buyers use the term "Monopoly" primarily to indicate source-related features or to primarily indicate product-related features of a product. Of course, buyers purchase a product because they desire to have it.

The court of appeals determined that petitioner's surveys and the testimony of petitioner's experts were irrelevant in this case and therefore had no evidence on petitioner's side, and found that Anti-Monopoly's first survey, unchallenged by the District Court as to its central finding, and Anti-Monopoly's second survey (which conformed to Anti-Monopoly I) were convincing. The court of appeals held that, to make a contrary determination (i.e., the findings and decision by Judge Williams) was clearly erroneous.

The court of appeals was very conscious of the standard to be employed when using Rule 52(a) of the Federal Rules of Civil Procedure, and the recent decisions of this Court under such Rule. The court of appeals began its opinion by acknowledging the limitations under the Rule, and went on to state how these limitations were being followed. The decision of the court of appeals in Anti-Monopoly II was unanimous, and followed the unanimous decision of the court of appeals in Anti-Monopoly I, which had 2 different judges on the panel. A total of 5 appellate justices (including 2 sitting by designation) have approved the standard set forth in Anti-Monopoly I. In neither case did Parker Brothers move for a rehearing.

In short, none of the possible bases for granting a writ of certiorari, are involved in this case because (a)

there is no conflict with a decision of another federal court of appeals; and (b) this Court has already decided the issue of law in Kellogg Co. v. National Biscuit Co., 305 U.S. 111 (1938) (the "Shredded Wheat Case"), which decision was adopted by the Lanham Act upon its enactment.

Also, a point never raised as an issue during this litigation is whether "common descriptive term" means something other than "genericness". This non-issue is discussed in part III below, beginning at p. 43.

The issues of infringement of "MONOPOLY" and Anti-Monopoly's defense of petitioner's unclean hands (based on petitioner's patent fraud and appropriation of the folk game monopoly from the public domain) was deferred by Anti-Monopoly I pending outcome of the trademark validity case.

I

**THE NINTH CIRCUIT'S DECISION
DOES NOT ALTER ESTABLISHED
TRADEMARK LAW -- APPLIES TO
CASE OF UNIQUE PRODUCT, ITS
OWN GENUS, SINGLE MANUFACTURER,
EXPIRATION OF PATENT, NO OTHER
NAME FOR PRODUCT -- PETITIONER
CREATES SHAM ISSUES INSTEAD**

Petitioner raises a sham issue when claiming that the Ninth Circuit requires that the upholding of a trademark against a claim of genericness, necessitates that a majority of the persons surveyed must be able to identify the actual name of the product's producer. This sham issue appears at pp. 13-18 of the petition (e.g., at p. 13, "out of affection for the producer", meaning "loyalty to a particular producer" (p. 14); then "specific loyalty to the publicly unknown manufacturer" (p. 17); then "fondness for Universal City Studios, Inc." (p. 17). There never was such a determination or issue in the litigation, which is

explained at pp. 16-18, 30-31 and 60 in this brief.

It was always recognized in this litigation that trademark validity does not require that the public know the name of the trademark owner. However, petitioner's arguments in its petition often include this sham issue, which makes such arguments meritless and irrelevant.

After setting up this sham issue (claimed rejection of well-established "anonymous producer" principle), petitioner then (at p. 16-17) goes on to misrepresent the Ninth Circuit's holding in Anti-Monopoly II by claiming that it "conditioned the continued validity of the "MONOPOLY" trade-mark on whether a majority of purchasers say that they would purchase the game 'primarily because I like Parker Brothers' products.'"

See pages 16-18 above where respondent has already explained this point.

Petitioner also argues as an aside (at pp. 15-16) that Judge Learned Hand in his Aspirin decision declined to emphasize that a showing against genericness could be made in part by using a purchasers' motivation survey. The matter was not discussed by Judge Hand. Anti-Monopoly's argument on its "Motivation Survey" is set forth at pp. 38-43.

Petitioner goes on to cite "PAC-MAN", "E.T.", "TIDE", "TRIDENT" and "WHEATIES" (p. 17) ("TIDE" being the only one of such trademarks which has previously been mentioned in this litigation) and claims that the Ninth Circuit's decision "immediately jeopardizes many of the most successful marks on consumer products". This is sheer nonsense. The

claimed jeopardy to the "PAC-MAN" and "E.T." marks is based on the Ninth Circuit's non-existing ruling against anonymous sources. The supposed threat based on the "TIDE" Survey was discussed at p. 13-15 above.

The buyer motivation issue is used to suggest that the "TRIDENT" and "WHEAT-IES" trademarks are in peril. On the statement given, there is no way anything can be said about "TRIDENT"; however, the "WHEATIES" example demonstrates the opposite, that the primary significance test using buyer motivation would count the answer cited by petitioner (p. 17, "breakfast cereal endorsed by champion athletes") as source significance since Anti-Monopoly I clearly tabulated consumer satisfactions of a product based on advertising as source-related.

If petitioner has been misleading trademark owners with these sham issues, to get them to support petitioner with amicus briefs, this would explain the alleged "consternation among owners of nationally known trade-marks" (p. 14). The consternation is artificial and unwarranted, but apparently needed by petitioner to support its meritless arguments before this Court.

The Coca-Cola Company v. The Koke Company of America, 254 U.S. 143 (1920) arose as an infringement defense based on fraudulent use of a trademark by its owner, rather than any issue of genericness. Judge Holmes did not use "secondary meaning" in the traditional trademark sense because secondary meaning arises when the producer has greater significance than the product.

II

**THE NINTH CIRCUIT'S DECISION
EXPRESSLY FOLLOWS "SHREDDED WHEAT",
A LANDMARK PRECEDENT OF THIS COURT
AND DOES NOT CONFLICT
WITH DECISIONS OF OTHER CIRCUITS**

A. This Court's Precedent Followed:
Petitioner lists four alleged ways in which this Court's celebrated Shredded Wheat decision was misunderstood by the Ninth Circuit (Pet. at p. 18), but petitioner is wrong: (1) the term "monopoly" is almost as descriptive as "shredded wheat", referring to the patented monopolizing feature; the increases in payments players can charge in line with the degree of monopoly power they hold; and the object of the game being to monopolize the board. It is the nearest word or term which could be used to describe a game of such type, and would be needed by anyone who wanted to market such a game, or its

antithesis (such as "ANTI-MONOPOLY"); (2) because of the patent period and accompanying trademark, both products (monopoly game and shredded wheat) were known only by the trademark name, during and after the patent period; (3) in both cases, the trademark owner permitted the mark to become generic through abandonment (as the term is used in the Lanham Act); both marks were declared generic by the courts, and the fact that no competitor entered the shredded wheat market for a long period of time under the generic name was held to be irrelevant by Judge Brandeis in the "Aspirin Case"; and (4) denial of registration because of a statutory 10-year limiting period had no bearing on the outcome of Shredded Wheat; exclusive use of the "Shredded Wheat" trademark of Nabisco was lost upon expiration of the patent and could not be recaptured by the de facto secondary meaning.

The Ninth Circuit cites Shredded Wheat for: (a) single-manufacturer case, association by the public with the single producer (anonymous or not) has no trademark relevance; (b) a trademark used generically passes into the public domain after patent expiration; and (c) even after invalidation as generic of the MONOPOLY trademark, Anti-Monopoly must still take reasonable care to inform the public of the source of its product.

Petitioner raises the sham (anonymity) argument again by pointing out (correctly) that Shredded Wheat does not require the public to identify the trademark owner's actual name to establish primary significance.

B. Decisions in Other Federal Circuits -- Petitioner cites cases (Pet. at p. 20-21) relating to the sham anonymity issue, requiring no further comment; one case (footnote 14, p. 20) relates to the

"absurdity issue" raised in petitioner's 1st Question and discussed above (p. 3)⁵; and 7 cases (p. 21) which supposedly show that courts uphold trademarks more susceptible to genericness challenge than the word "MONOPOLY" applied to a board game; but the genericness of "MONOPOLY" was much stronger than in these cases (HOTRAY, THE UNCOLA, BEMBERG, CON-TACT, Q-TIPS, CLUB CRACKERS and DICTAPHONE).

Marks v. Polaroid Corp., 129 F. Supp. 243, 270 (D. Mass. 1955), aff'd on unrel. grounds, 237 F.2d 428 (1st Cir. 1956), cert. denied, 352 U.S. 1005 (1957) was cited by petitioner (p. 21) as a

5. Judge Nies rightly opposes motivation studies when their object is to determine if "the (primary) reason" for buying something is to get "the product" or "to seek out particular sources". He is not at odds with Anti-Monopoly II since he refers approvingly to G.D. Searle & Co., 360 F.2d 650 (CCPA 1966), in which trademark registration was denied for a name which was the only name for a product constituting a genus of one.

Circuit Court case involving a trademark not invalidated for genericness; but the case was affirmed by the First Circuit on non-trademark grounds, 237 F.2d 429. The trademark issues were never before it.

Petitioner cites leading generic decisions and tries to distinguish them, without success: (1) claiming they involved inadequate policing and permitting generic use (p. 22), but petitioner also policed inadequately and allowed generic use by others; (2) the three cases involved competitors in the marketplace after expiration of the patent; but the Lanham Act cancellation provision does not recognize this as a distinction; see Shredded Wheat; and the legislative history of the Lanham Act, pp. 43 et seq. herein; Thermos did not involve a patent.

In attempting to show that Anti-Monopoly II misapplied the "Aspirin",

"Cellophane" and "Thermos" opinions, petitioner claims that these cases do not apply when a trademark identifies both the source of a product and the unique product itself (Pet. at 23):

"The Ninth Circuit's fundamental error was ... that a trademark may survive only if purchasers rely on the trademark to identify the source rather than to identify the unique product."

Petitioner here is trying to confuse the instant situation of product uniqueness (constituting its own "genus") with the typical market situation where slightly differentiated products compete with each other claiming the differentiations make each product unique.

Anti-Monopoly I held that "Monopoly may constitute its own genus" (Pet. App. at 48a). As petitioner wrote about Anti-Monopoly I, the Ninth Circuit had indicated that a distinctive game such as "MONO-

POLY" could be "its own genus" (Pet. at 7) so that the mark by which it is known to the public would become generic and the owner would then lose his trademark rights (Pet. at 7). With this question before it, the District Court upon remand found that the game "Monopoly" is so unique that "it will not suffice to analyze source-related as opposed to source-irrelevant characteristics because most source-related characteristics (e.g., price, style, durability, quality) are primarily relative terms, implying a comparison with product substitutes, or near substitutes. Here there are no substitutes; there is only MONOPOLY" (Pet. App. at 30a).

If the District Court had understood the law and had been willing to apply it, the District Court should have invalidated the "MONOPOLY" trademark at

this point since it had found that the game "Monopoly" is a genus of one, and it had accepted the "THERMOS" survey which showed that the public has no other name for this product.

But in any case, this finding distinguishes this case from the mass of "unique" products in the sense of "differentiated products" for which producers spend enormous sums in advertising to maintain consumer loyalty against "near substitutes" (e.g., "TIDE" and "COCA-COLA").

This genus-type uniqueness also explains why petitioner managed to rack up huge, steady sales of "Monopoly" without any paid advertising. If you have a popular game and if there are no substitutes or near substitutes for it, there is no need for defensively reminding the

public of this type of "uniqueness" by product differentiation.

It also explains why the primary significance of ANTI-MONOPOLY I cannot be mechanically extended to the very different subject of detergents (ANTI-MONOPOLY-II, Pet. App. at 18a), or even to the whole world of games where many games are near-substitutes for each other. While the primary-significance test suggested by Anti-Monopoly II is the ultimate test of genericness, different types of products may well require different tests. The generic problem of product-differentiated goods, puffing their uniqueness, is simply not relevant to this litigation, no matter how hard petitioner argues.

The Ninth Circuit also did not misapply the "ASPIRIN", "CELLOPHANE" and

"THERMOS" cases by stating that source-identification and product-identification functions must be viewed as mutually exclusive alternative. Under the Shredded Wheat holding, this was appropriate, to eliminate the effect of de facto secondary meaning. Furthermore, the ability to distinguish source identification from product identification is at the heart of the concept of secondary meaning and of the quality controls that accompany trademark licensing. In fact, petitioner argues, erroneously, that it is impossible to identify factors which are source-related and factors which are product-related, so that the Supreme Court's primary significance test in the Shredded Wheat case as carried over into the Lanham Act cannot be administered because it would be impossible to sum up separate categories. But this is absurd, because it eliminates all objective testing, pre-

vents determination of relative strength, and admits that you cannot ascertain if a trademark has source-related features. Petitioner's stand would leave trademark law in shambles. You could not have a genericness doctrine, secondary meaning, de facto secondary meaning, and licensing (with accompanying quality controls).

C. Petitioner's Motivation Argument Lacks Merit (at p. 23) -- Petitioner claims that the Ninth Circuit decision conflicts with other circuits concerning its suggested Motivation Survey to determine primary significance. But the Second Circuit held in the "CELLOPHANE" case that "what was in the customer's mind" was material for trademark validity purposes, Dupont Cellophane Co. v. Waxed Products Co., 85 F.2d 75, 81 (2nd Cir. 1936). Also, in the "ASPIRIN" case, Bayer Co., Inc. v. United Drug Co., 272 F. 505, 509, 513-514 (SDNY

1921), there are constant references to buyer motivation, i.e., how buyers use the trademark when they want to buy products. Also, in the "THERMOS" case, King-Seeley Thermos Co. v. Aladdin Industries, Inc., 207 F. Supp. 9, 21-22 (SDNY 1962), aff'd, 321 F.2d 577 (2d Cir. 1963), the District Court accepted as its dispositive survey a poll which among its key questions asked motivation questions (see footnote 8, "If you were going to buy one of these (described) containers tomorrow -- that is, the type that keeps food or beverages hot or cold -- what type of store would you select to make your purchase?; and "What would you ask for -- that is, what would you tell the clerk you wanted?").

Instead of being in conflict, the decisions in these 3 cases are wholly consistent with the Ninth Circuit's decision on this evidentiary matter.

The quote from Judge Williams' decision (Pet. at p. 23) clearly reveals his failure to understand primary significance: "The dispositive issue hence is not why consumers buy MONOPOLY sets, but rather, what is their understanding of the name MONOPOLY?" (p. 23). The question asked by Anti-Monopoly was not why consumers buy Monopoly sets, but rather why consumers buy Monopoly.

MONOPOLY alone, not MONOPOLY sets, is a word used by customers motivated to buy the MONOPOLY sets. The MONOPOLY sets are things which are symbolized in language by the word MONOPOLY. The meaning of a MONOPOLY set to a buyer is the same as the meaning of the word MONOPOLY unless the buyer does not understand the language. Whether MONOPOLY here is generic or not depends on whether the thing bought means to the buyer mainly source-related or product-related attributes. And since

the word MONOPOLY stands in the consumer's mind symbolically for the object, whatever holds for the thing holds for the word. To define and differentiate source-related from product-related attributes in the consumer's mind is a difficult task in some areas where product differentiated goods compete with each other by fine distinctions but it is straight-forward in board games where product attributes and source-attributes largely run parallel to the two easily distinguished dictionary definitions of "game": "competition or sport like football", or "game equipment".

Therefore, when consumer responses to the "Why do you buy Monopoly?" question are largely product-related (playing), then that gives objectively (a) the consumers understanding of source-related versus product-related features of the game product bought and

(b) the consumers' understanding of the name with which he makes his purchase.

Conceivably, therefore, primary significance could be tested effectively either by probing the consumers' understanding of the trademark or through a buyer motivation test. In most primary significance cases, as in Anti-Monopoly I and II, the courts have preferred the buyer motivation test. The reason is that buyer motivation test narrows the scope of "meaning" down to the commercial sphere within which trademark law functions. And secondly, consumer respondents will give more thoughtful answers when their money is on the line.⁶

6. In the case of Monopoly, it was especially easy to design primary significance questions and get thoughtful answers from buyers because the form game-playing takes, a product feature in the public domain after lapse of the patent, is easily distinguishable from game equipment, which is source-related.

Trademark law has to be put in a context of buyer motivation, its functioning in a commercial economy, which is, on the one hand, to prevent other businessmen from motivating buyers to purchase their competing product by means of a trademark which belongs to someone who has built source identification and reputation with his trademark while, at the same time, preventing the anti-competitive abuse of trademarks if they are generic.

III

THE NINTH CIRCUIT'S DECISION IS CONSISTENT WITH THE LANGUAGE AND LEGISLATIVE HISTORY OF THE LANHAM ACT

Petitioner now raises an issue for the first time in this litigation, that a "common descriptive name" as found in the Lanham Act means something other than "generic".

From the inception of this litigation up to the filing of petitioner's petition, everyone in this litigation has agreed that "common descriptive name" means "generic". Judge Williams in his first opinion used the 2 terms interchangeably (Pet. App. D at 56a, 57a); petitioner's own brief to the court of appeals in Anti-Monopoly I stated:

"The trial court found that MONOPOLY was not, either at the time of its adoption or now, the generic or common descriptive name of any real estate trading games (sic)" (p. 19)

Petitioner did not object to this interchangeable use of the two terms by Judge Williams. Also, on page 18 of the same brief, petitioner quoted from Judge Williams' interchangeable use of the two terms, also without taking any exception to such use. No discussion or argument of any kind was ever raised by any of the parties or any of the courts to the effect

that there was any difference in meaning between "common descriptive name" and "generic". The Ninth Circuit in both decisions used the terms interchangeably. In its first opinion, the court of appeals defined "common descriptive name" as "'generic' name"; and stated that "Courts equate 'common descriptive name,' as used in the statute, with the shorthand expression 'generic term', citing Abercrombie & Fitch Co. v. Hunting World, Inc., 537 F.2d 4, 9 (2d Cir. 1976). (Pet. App. C 37a, 40a). Also, see Miller Brewing Co. v. Heileman Brewing Co., 561 F.2d 75 reh. & reh. en banc den. (7th Cir. 1977), cert. den., 434 U.S. 1025 (1978) ("LITE" beer). In its second opinion, the court of appeals referred readers to its opinion in Anti-Monopoly I concerning the law about generic terms (Pet. App. A at 4a) and said if a trademark becomes generic it is invalid as a "common descriptive name". Everyone accepted the

proposition that the two terms were interchangeable in this litigation.

Now, after almost 9 years of litigation, petitioner's new attorney (retained for this petition) looks at the Lanham Act and proceeds to argue in this litigation that "common descriptive name" is not the same as "generic".

Petitioner now argues that cancellation of a registered trademark requires something other than proof of genericness; petitioner argues that the trade name must be used as the name for competing products (common in the sense of several producers rather than the common name for a product). Further, petitioner argues, that as long as only a single manufacturer is making the product, then the trademark is valid even though it is generic. Thus, a trademark which is used

as the generic name of a patented article would remain valid even after expiration of the patent, if the trademark owner succeeds in keeping other manufacturers out of the market by denying them use of the name by which people ask for the product.

This issue was settled in Kellogg Co. v. National Biscuit Co., 305 U.S. 111 (1938) (the "Shredded Wheat Case") and this case was by apparently unanimous agreement carried over into the Lanham Act. See Trade-Marks: Hearings on H.R. 82 Before the House Comm. on Patents, 78th Cong., 1st Sess. (1943), pp. 22-34, as follows:

Mr. Vanderbilt: * * * Section 33(b) in its present form would provide a new method of monopolization through the freezing of names which heretofore have been treated as public property, as private property, under the guise of trade-marks.

It was stated at the hearings before the subcommittee that sec-

tion 33(b)(4) did not change the present law and that the Shredded Wheat, Aspirin, and Cellophane cases would be decided the same way under the proposed bill, as under the prior law.

If that is so, what is the necessity for this provision, and why the change from S.895 in its original form?

The answer was made that the rights of the owners of trade-marks, and the rights of the public are protected under the definition of abandonment in section 45 of the act on page 46, sustain the contention that section 33(b)(4) does not change the prior law. But certainly there can be no claim of abandonment in a case where the owner of the trade-mark had a patent which expires but where he continues to sell and market his goods, so in the very case where one most needs to find relief, one gets no help whatsoever from the doctrine of abandonment.

In view of the position taken by the proponents of the bill that the important precedents that I referred to, Shredded Wheat, Aspirin, and Cellophane cases, are unchanged by section 33(b).... p. 22).

* * *

MR. VANDERBILT. Your Honor is giving me the Shredded Wheat, Aspirin and Cellophane cases under

a new name, and the tests the courts have proposed and which, so far as I know, have been universally accepted are these:

That when, after the lapse of time, certain terms come to acquire a public meaning, that meaning cannot be kept away from the public by an individual.

* * *

MR. LANHAM.... Sure-Clean ... can acquire a secondary meaning, can't it?

Mr. Vanderbilt. It would all depend on whether or not over the years, when the people wanted to have the product they had come to call for Energine or Shredded Wheat or Cellophane.

If those were the only names by which this product was known, and the public, when it wanted a thing to do the particular thing that those various commodities did, called for it by that name, then that name, according to the decisions of the courts, is said to be in the public domain.

Mr. Lanham. Suppose I don't have any patent on the Sure-Clean. It is just a trade-mark.

Mr. Vanderbilt. The same thing. I don't think it would make any difference. * * * (I)f people in general accepted it to be that, to the extent where the court found, as a matter of fact that it was a

generic term, then the word becomes public. That is the decision of our United States Supreme Court and several of our circuit courts.

Otherwise, there would be articles which we all wanted which we could not get, because we would not have a name to call them by.

The only one you could get them from would be the original manufacturer long after his patent rights expired.

May I say that this view of the law, as developed in the Shredded Wheat, Cellophane, and Aspirin cases, has been codified in the Restatement of Law and seems to be consistently applied.

All we are asking on this third and final point is that the law shall not be changed on that point, and that seems to be the desire of the proponents of the act....(p 24).

* * *

Mr. Byerly. * * * (T)he trade-mark owner ... may, intentionally, make his trade-mark and use it, not as a trade-mark but as the name of his product. ... (G)ets into the situation where he tries to eat his cake and have it too. That is, he would like to have all the public, whenever they wanted this kind of an article, call for it by his name, and he would like to have all dealers pre-

vented from selling anything but his particular article when that name was used. Of course, there is a straddle a man cannot make. He has either got to use it as a trade-mark and let the public associate with it what they will, and keep his trade-mark, or if he wishes to bring out a new article and coin a name for that article and make that the name of the article....

To deal with that situation ... we felt that putting that in the language defining abandonment was rather a definite way of dealing with it. ... It begins at line 14, 'When any course of conduct of the registrant including acts of omission as well as commission, causes the mark to lose its significance as an indication of origin.' ... It is abandoned, under those circumstances....

Mr. Lanham. Would that apply on a patent that had expired?

Mr. Byerly. Yes, it would; and that is a question on which the law is not quite so categorical, it seems to be, as our friend suggested, because if the trade-mark or what was originally a trade-mark has become the name of the patented article, that has become, not of secondary significance but its primary meaning. That is what it means. It is quite well recognized that when the patent expires, anybody can make the article, and anybody can call it by its name. That does not mean, by any means, that

every trade-mark used on a patented article, expires when the patent expires. ... (W)here a man practically christens his patented article with a name and gives the public the idea that that is the name of that article why then we have a situation such as is meant here under abandonment. That is, when the patent expires, that name loses its significance.

Mr. Lanham. could I now put out a product and call it "Sweet Loaf" and say descriptive under it, "This is a shredded wheat"?

Mr. Byerly. Could you now?

Mr. Lanham. Yes.

Mr. Byerly. I think you could. That is, the court has held that the "Shredded Wheat" trade-mark is invalid.

Mr. Lanham. Then the term has not become so generic that I could not use it descriptively; is that right?

Mr. Byerly. You can use it descriptively now, because the court has held that it is the name of this particular sort of an article. What that actually happens, it seems to me that the trade-mark significance is gone. ... (W)hen we concede the conclusion reached by the Supreme Court, that those terms had come to mean to the public a particular kind of biscuit, regard-

less of where it came from, why then, your significance of origin is gone, and you have a word which is just like any descriptive name and which anybody can use.

Mr. Lanham. And that is the significance of this particular provision on abandonment, as you remember it?

Mr. Byerly. That is precisely the significance of it, and since it is in there, and I think a better place to have it than merely as a defense, because if it is an abandonment, it means not merely that anyone who is sued for infringing on this abandoned mark can be protected, but it means that you can actually strike the mark off the register, you are through with it, it is gone. (pp. 27-28)

* * *

Mr. Martin. * * * In my opinion, the Cellophane case would have been decided exactly as it was decided had H.R. 82 been enacted at that time. The other case which was mentioned was the Shredded Wheat case. We have the same situation in the Shredded Wheat case. ... (In my opinion, it is very clear that had that decision been rendered after the enactment of the bill H. R. 82, the same decision would have been reached. In other words, I feel that the present H. R. 82 will not and would not affect the decisions which heretofore have been made in connection with generic

terms. In fact, I think it would make it much easier for the courts to reach those conclusions. (p. 34)

Also, see Trade-Marks: Hearings on H.R. 82 Before a Subcomm. of the Senate Comm. on Patents, 78th Cong., 2d Sess. (1944), as follows:

Senator Pepper. * * * (A)ny court in the world that would read this record would certainly see that it is the intention of this committee and the intention of the authors of the bill, and will be the intention of the Congress, not to encourage monopoly.... (p. 144)

Also, see Registration and Protection of Trade-marks: Hearings on S. 2540 Before a Subcomm. of the Senate Comm. of the Judiciary, 83d Cong., 2d Sess. (1954), pp. 93-94, letter from William P. Rogers, Deputy Attorney General, stating in part:

* * * * The bill would eliminate the ground for cancellation ... that the mark does become a common descriptive name of an article or substance on which the patent has expired (e.g., 'linoleum,' 'aspirin,' 'shredded wheat') would be, in effect, to continue some

aspects of the patent monopoly beyond its term.

"We understand that a suggestion will be made that this portion of the bill be amended to merely eliminate the phrase in the present act 'on which the patent has expired.' This would broaden the present law to include all cases in which the mark has become the common descriptive name of an article. If so changed, this Department would not object to this provision of the bill.

* * *

"Section 11 would amend section 15 of the present act by eliminating therefrom subsection (4), which is to the effect that 'no incontestable right shall be acquired in a mark or trade name which is the common descriptive name of any article or substance, patented or otherwise.' The provision deleted by this amendment is a clear statement of the fundamental principle, long recognized in trade-mark law, that a common descriptive word should not be subject to exclusive appropriation by one person. This Department is opposed to the deletion of subsection (e), which sets forth this salutary principle. It would not object to a suggested revision of the bill which would keep this subsection but would omit ... the phrase 'patented or otherwise'."

Petitioner does admit that incontestability is lost if the mark is aban-

done through commission or omission of the trademark owner (Pet. at p. 27). This is precisely the case. Petitioner chose a trademark which was highly descriptive, which described the essential monopolizing features of the game. Also, petitioner failed to spend even \$1 to advertise MONOPOLY, which also means that petitioner did not spend anything to educate the public about the source-significance of the mark; and never used the trademark on any products or services other than the one game, which was an omission of a tactic used by other vulnerable trademark owners to augment the source significance of their mark to make it clear that the mark is associated with more than one product and does not represent one product itself. Also, petitioner promoted the game by holding "Monopoly tournaments", which was a product-related use of the mark.

Petitioner recognized its generic problem during the 1950's, when the patent expired, and sought to cure it by eliminating references in the game rules to becoming the "monopolist" as the objective of the game; and also by creating the hopeful "generic" term "real estate trading game equipment". However, given the lack of advertising and failure to mount an educational campaign to advise the public of its claim of a trademark in the term MONOPOLY, the rule changes were not enough and MONOPOLY remained a generic term.

These acts of omission and commission caused the statutory abandonment, which results in loss of the MONOPOLY trademark as envisioned under the Lanham Act.

The Ninth Circuit detailed the omissions and commissions of petitioner (Pet. App. A at 12a):

"... To us, the evidence overwhelmingly shows that they very successfully promoted the game of Monop -

oly, but that in doing it they so successfully promoted 'Monopoly' as the name of the game,' that it became generic in the sense in which we use that term in trademark law."

Petitioner's belated, contrived argument of statutory construction does not change this result. A look at the legislative history shows Shredded Wheat was carried over into the Lanham Act; that "common descriptive name" has the same meaning as "generic"; that the same result applies whether or not a patent was involved; and that the abandonment occurs by reason of the trademark owner's omission and/or commission, and regardless of whether or not another manufacturer of the same product is in the marketplace.

IV

THE NINTH CIRCUIT WAS CORRECT IN OVERTURNING
THE DISTRICT COURT DECISION AS
"CLEARLY ERRONEOUS" -- RESPONDENT'S SURVEYS
AND EXPERTS CAREFULLY FOLLOWED THE
NINTH CIRCUIT RULING WHILE
PETITIONER'S SURVEYS AND EXPERT TESTIMONY
DID NOT AND WERE IRRELEVANT

The district court's fact finding which the Ninth Circuit reversed reads: "As a game trademark, MONOPOLY primarily denotes its producer, Parker Brothers..." (Pet. App. at 31a). The Ninth Circuit ruled that "as applied to a board game, the word 'Monopoly' has become 'generic'", i.e., "Monopoly" is used by the public primarily as the indicator of a game to be played.

A discussion of the Ninth Circuit's reasoning is also set forth at pages 12-18 and 20-21 above.

Also, the District Court rejected Anti-Monopoly's Motivation Survey with the comment that the "primary significance" test "does not seek an explanation of an actual purchaser's motivation for purchasing the game. The two are not the same." (Pet. App. at 27a). The Ninth Circuit held that Anti-Monopoly's survey followed its decision in Anti-Monopoly I

and that all of Judge Williams' objections to the Motivation Survey "were clearly erroneous" (Pet. App. at 16a).

Judge Williams rejected the Motivation Survey because it included in its screening question "Business board game produced by Parker Brothers" (Pet. 28a), and added that the screening question therefore "brushes aside as an assumed fact, the very fact on which the Ninth Circuit...mandated further inquiry".

But this is no more than the sham issue surfacing once again. Anti-Monopoly II stated that "No evidence or expert opinion was given to support this view and it has no inherent plausibility." (Pet. App. at 16a). See p. 17 above and Pet. pp. 41a-42a for a discussion.

This screening question (carefully balanced between product and source indicators) was used solely to obtain respon

dents who were past or probable purchasers of Monopoly. Persons who were aware of Monopoly (even if they did not know that Parker Brothers was the source) were kept in the survey.

Judge Williams found that the Motivation Survey was inherently biased in favor of Anti-Monopoly "including intimations that Prof. Anspach suggested the language which was used" (Pet. App. at 28a, fn. 4). The Ninth Circuit found no merit to these objections (Pet. App. at 16a-17a) and also held that the Motivation Survey was "a reasonable effort to find" ... "the sense in which a purchaser used the word 'Monopoly'" (Pet. 16a).

Judge Williams argued that the Motivation Survey was overwhelmingly prone to subjective grading (Pet. App. at 28a, fn. 4), but the Ninth Circuit held that Anti-Monopoly's "categories were reasonable ones" and not to be rejected because

of the use of human judgment in the grading process (Pet. App. at 17a). Also, Anti-Monopoly offered the raw responses in evidence, but petitioner objected to this evidence and the offer was withdrawn, at which point Judge Williams said: "if (counsel for petitioner had) asked for them, he could have received them. If he received them, he could have turned them over to his expert to check them out and see if they give a reliable or non-reliable basis for the opinion. But since he didn't ask for them, I don't think they should go into evidence." (Pet. App. at 17a). The Ninth Circuit then stated that "General Mills cannot now argue that the raw responses were not in fact correctly categorized" (Pet. App. at 17a).

It should be noted that Judge Williams never rejected the testimony of Anti-Monopoly's expert witnesses on the basis of lack of credibility or competence. His rejection of Anti-Monopoly's THERMOS survey in the first trial was that it did not convince him by itself that MONOPOLY was generic. He implicitly accepted its result that the public calls the game only by the word "Monopoly" since he ruled in his first decision that the public's understanding is that the particular game "is called Monopoly" (Pet. App. 59a). Therefore, there is no disagreement between Judge Williams and Anti-Monopoly II regarding this crucial fact. Judge Williams' rejection of the buyer Motivation Survey in the second trial was based on the questions asked in the survey, which the Ninth Circuit has upheld.

In regard to petitioner's promotional expenditures, Judge Williams was

impressed by the amount of money spent on publicizing petitioner's MONOPOLY mark in his first decision (Pet. App. 55a) and in the second decision, he wrote: "Parker Brothers has expended substantial time, energy and money on promoting and policing their trademark, spending over \$4 million in advertising expenditures." (Pet. App. 30a). The Ninth Circuit found that the evidence showed that petitioner's promotion "promoted Monopoly" as "the name of the game" .. "so successfully" ... "that it became generic" and that, therefore Judge Williams' conclusion that the non-existent advertising and the promotion kept the mark from being generic was a "mistake". The only testimony for petitioner was in regard to the promotion of the game, and no witness or document proved any advertising expenditure.

Judge Williams' findings upon which he based his second decision in petition

er's favor were discussed at length by the Ninth Circuit in its opinion (Pet. App. at 9a-19a). In addition, the Ninth Circuit pointed out that the term "monopoly" was descriptive of the game's objective and that petitioner "subjected itself to a considerable risk that the word would become so identified with the game as to be 'generic.'" (Pet. App. 11a).

CONCLUSION

For the foregoing reasons, the petition for a writ of certiorari should be denied.

Respectfully submitted,

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APPENDIX I

P. 31 11/18/82

Board Games Fighting Back Against Video

By CLAUDIA RICCI

Staff Reporter of THE WALL STREET JOURNAL

NEW YORK—If you can't beat 'em, join 'em. The makers of old-board games like Monopoly and Scrabble are fighting and joining their toughest competition—video games.

The board-game makers are battling hard and rather successfully to avoid getting 'zapped' by the likes of Pac-Man and Donkey Kong. Though video-game sales last year clobbered the board people, more advertising, new games and, in some cases, diversification into electronics have kept the board gamers as a force in the market.

Last year's rush to video games hit even Monopoly, the best-selling board game of all. The damage reports so concerned Parker Brothers Inc., the General Mills Inc. subsidiary that makes and markets Monopoly, that it began buying advertising for Monopoly for the first time since the game's introduction in 1935. Parker Brothers' television campaign, which began in August, has as its theme that "Parker Brothers' kind of fun brings people together."

Selling a Family Activity

Parker Brothers is using the same idea to sell four other board favorites, Clue, Sorry, Risk and Pay Day. What advertising Parker Brothers used to buy was directed at children, says R. Bruce Jones, marketing vice president, but it's now directed at parents, too. "What we're selling is the idea of an all-family activity," he says.

In implying that video games suit loners, the board-game advertising touches a concern of some parents. In any case, the advertising seems effective. Sales of all five games have picked up, and the company, as a consequence, is increasing its sales forecasts. Mr. Jones thinks the decline in sales of board games "has bottomed out. We've stemmed the tide," he says.

Sat., November 6, 1982

San Francisco Chronicle 3-

Game Goes Computer But It's Still Monopoly

Beverly, Mass.

The popularity of Monopoly once assured it a spot on the Boardwalks and Park Places of the game industry. But slipping sales and competition from video games have forced its maker to try new ways of selling the game that celebrates American capitalism.

"It has always been a simple case of keeping Monopoly in the public eye because the game was so big and so popular that it would take care of itself," said R. Bruce Jones, vice president of sales at Parker Brothers. "We just find that is not enough now."

To bolster sales, the company is breaking two of its rules: It is actively advertising and it is tampering with the game, adding a new computer accessory.

The gadget, called "Playmaster," keeps track of the action, cuts complicated loan deals and even rolls electronic dice with musical accompaniment. Playmaster tweedles out "I've Been Working on the Railroad" when a player lands on a railroad square, and the ominous opening notes of Beethoven's Fifth Symphony when it calls back loans.

"This adds a number of new elements. It makes it a faster, more aggressive game," Jones said.

Playmaster, which has been on the market since September, sells for \$60. So far, Jones said, it is a success.

Confronted with a drop in sales from 3 million games in 1974 to 2 million last year, Parker Brothers has also budgeted \$4 million to pitch Monopoly on television. But

unlike many toy ads, the commercials are aimed at mothers, not children.

"We're competing with very exciting, action-oriented games that are visually stimulating to a kid," Jones said, "but virtually every mother out there played our game when she was a child."

Despite the electronic lure of Pac-Man and Asteroids, Jones said Monopoly still holds a universal fascination — greed.

"I can tell you that the interest in money is still there," he said.

Associated Press